REMARKS

Entry of this Amendment is proper under 37 C.F.R. § 1.116, because the Amendment places the application in condition for allowance for the reasons discussed herein; does not introduce any new claims; does not raise any new issue requiring further search and/or consideration because the amendments amplify issues previously discussed throughout prosecution; relates to matters of form rather than substance because the added language was already present in the claims, and places the application in better form for an appeal should an appeal be necessary.

The Amendment is necessary and was not earlier presented because it is made in response to arguments raised in the final rejection and as clarified during the personal interview held March 2, 2004 as discuss further below. Entry of the Amendment, reexamination and further and favorable reconsideration of the subject application in light of the following remarks, pursuant to and consistent with 37 C.F.R. § 1.116, are thus respectfully requested.

1. Personal Interview & Finality of the Amendment

Applicants thank Examiner Khare for meeting with Applicants' representative, Mercedes Meyer, on March 2, 2004, to discuss the rejections under with 35 U.S.C. § 112, second paragraph. Applicants note with appreciation that the Examiner indicated that the recitation of "dextran" would be acceptable with regard to the claims.

The Interview Summary of the interview of March 2, 2004 indicates that the Examiner will have to do a search of the art with regard to the claimed polysaccharides, as the Examiner believed that a search based on the claims could not have been earlier performed absent the amendment to the claims. For the record, Applicants respectfully disagree.

Applicants submit that based on the claims and the specification, it would be evident that dextran and oligomers of sugar moieties which yield the same number of hydrogen bonds as dextran would have been searchable. Accordingly, regardless of the current amendment to the claims, Applicants submit a search could have been and should have been performed on the subject matter of the claims pursuant to

M.P.E.P. § 2173.06. The first approach set forth in § 2173.06 is recommended because it avoids piecemeal examination and expedites prosecution.

Accordingly, as the subject matter of the claims is the same, Applicants submit that no new search due to Applicants' amendments is required. Rather, finality of the rejection should be withdrawn and the claims searched to avoid further delay in prosecution of the application pursuant to § 2173.06.

Applicants further note for the record that according to M.P.E.P. § 904, the first search should be such that the examiner need not ordinarily make a second search of the prior art, except to check to determine whether any reference which would appear to be substantially more pertinent than the prior art cited in the first Office action has become available subsequent to the initial prior art search. Applicants refer to the Office Action of June 27, 2002 (Paper No. 6), page 5, which indicates that the prior art made of record has already been considered by the Examiner. Thus, Applicants submit that the Examiner has not met his duty of examination, and respectfully finality of the action should be withdrawn.

2. Status of the Claims

The Office Action Summary page of the outstanding Office Action indicates that claims 17-37 are pending. Applicants note that this is incorrect. Further to the Reply and Amendment filed by Applicants on July 18, 2003, claims 13-37 are pending. To this end, Applicants note that the Examiner indicates claims 13-17 as under examination in the first sentence at the top of page 2 of the detailed action. Acknowledgement and correction is respectfully requested.

Applicants note that the rejection of claims 17 and 21 under 35 U.S.C. § 112, second paragraph set forth in the previous Office Action of April 18, 2003 (Paper No. 11, page 3, for the recitation of "Ringer solution") is not reasserted in the outstanding Office Action. Thus, Applicants conclude that this rejection has been overcome.

After entry of the instant Amendment, Claims 13, 15, 20, 22-24, 27-29, and 34-37 are amended. Claims 14, 26 and 33 are canceled. Applicants assert that no prohibited new matter has been entered by way of the subject amendment, as discussed in further detail below. Applicants reserve the right to file a continuation

and/or divisional application on any subject matter canceled by way of this or any amendment related to this application.

Basis for the amendments to Claims 13, 24 and 29 may be found throughout the specification and claims as-filed, and at least at page 6, line 12 to page 7, line 14; Examples 1-3 on pages 9-16 (discussing the use of dextran in the reduction of viscoelasticity and in the increase of mucociliary clearability of sputum); at page 8, lines 11-20 (discussing same with regard to polysaccharides other than dextran); and Claims 15, 27 and 34 as-filed.

Amendments to Claims 15, 27, and 34 to recite "the polysaccharide is an oligomer comprising glucose and is dextran" is encompassed by at least the title of the application, which refers to dextran. Dextran is a sugar polysaccharide comprised of glucose moieties.

Claims 20, 22, 23, 28, 29, and 35-37 have been amended to depend from another pre-existing claim.

3. Rejections under 35 U.S.C. § 112, second paragraph

3.1 Claims 13, 24, and 29

Claims 13, 24, and 29 stand rejected under 35 U.S.C. § 112, second paragraph for recitation of the phrase "number of hydrogen bonding sites", as this phrase is purportedly indefinite. Claims 13, 24 and 29 are amended herein to remove the phrase "number of hydrogen bonding sites. Thus, Applicants submit this rejection is mooted. Accordingly, the rejection should respectfully be withdrawn.

3.2 Claims 13, 14, 16-20, 22-24, 26, 29, 32, 33 and 37

Claims 13, 14, 16-20, 22-24, 26, 29, 32, 33, and 37 stand rejected under 35 U.S.C. § 112, second paragraph for the recitation of the term "polysaccharide", as it is purportedly unclear whether it is a dextran polysaccharide or any polysaccharide.

Applicants submit that it would be clear to the skilled artisan, from the specification and the claims as-filed, that the present invention is directed to any polysaccharide, and is not limited to a dextran polysaccharide. Specifically, Applicants refer the Examiner to page 8 of the specification, which discusses

polysaccharides other than dextran which may be used with the present invention. Applicants also note that dependent claims 15, 24, and 29 (before and after entry of the amendment) recite polysaccharides that are not dextran. Finally, Applicants note that the title and abstract of the present invention refer to the "use of dextran and other polysaccharides". Thus, Applicants submit that the skilled artisan readily would have known what the subject matter of the invention encompassed with or without the instant amendment.

In addition, Applicants have amended independent claims 13, 24, 26, 29 and 33 to recite specific polysaccharides comprising an oligomer of glucose, galactose, fucose, glucosamine, or galactosamine. This grouping of polysaccharides includes dextran which is an oligomer comprising glucose moieties. Thus, Applicants submit that this rejection is obviated and respectfully request that it be withdrawn.

3.3 Claims 15, 27, and 34

Claims 15, 27, and 34 stand rejected under 35 U.S.C. § 112, second paragraph for the recitation of "oligomers of galactose and fucose and the amino sugars glucosamine and galactosamine". The claims stand rejected as the phrase "oligomers of galactose and fucose and the amino sugars glucosamine and galactosamine" purportedly fails to define the combination of galactose and fucose and the amino sugars glucosamine and galactosamine and the types of linkages between these moieties.

For purposes of more clearly reciting the subject matter of the claimed invention, the claims from which Claims 15, 27 and 34 depend have been amended to recite "the polysaccharide is an oligomer comprising glucose, galactose, fucose, glucosamine, or galactosamine." Consequently, Claims 15, 27 and 34 have been amended to recite an oligomer comprising glucose; such an oligomer is dextran. Thus, Applicants submit that it would be clear to the skilled artisan that Applicants are referring to chains comprising one of the listed sugars. One example is dextran which comprises a chain of glucose moieties. Thus, Applicants submit this rejection is obviated, and respectfully request that it be withdrawn.

CONCLUSION

In view of the foregoing, further and favorable action in the form of a Notice of Allowance is believed to be next in order. Such action is earnestly solicited.

In the event that there are any questions relating to this application, it would be appreciated if the Examiner would telephone the undersigned attorney concerning such questions so that prosecution of this application may be expedited.

In the event any further fees are due to maintain pendency of this application, the Examiner is authorized to charge such fees to Deposit Account No. 02-4800. Such fees include fees associated with a Notice of Appeal, should Appeal be necessary.

Respectfully submitted,

BURNS, DOANE, SWECKER & MATHIS, L.L.P.

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By: _____
Mercedes K. Meyer, Ph.D., Esq.
Registration No. 44,939

P.O. Box 1404
Alexandria, Virginia 22313-1404
(703) 836-6620